



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-98-232-50870

Office: Vermont Service Center

Date: JAN 29 2001

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

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identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a minister. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on August 11, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from August 11, 1996 to August 11, 1998.

In a certificate, dated November 25, 1993, a representative of the Camara Mosque in the Ivory Coast stated that the beneficiary "was appointed by the Higher Council as imam for Camara Mosque since [REDACTED] He is a member of the Higher Council of Imams." The petitioner also submitted a photocopy of the beneficiary's resume which indicates that the beneficiary worked as a minister at the Camara Mosque since October [REDACTED]

On February 4, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, in a letter dated September 28, 1996, a representative of the "Islamic League of Preachers in Cote of Ivory" stated that the beneficiary:

is designated as Imam for the mosque of Camara to the Abobo district since the 02/21/1992.

Seen [sic] the character voluntary of work within our structure, [the beneficiary], doesn't benefit of any stationary salary but the bounties of transport and some occasional grants who constitutes only some derisory [sic] value.

The petitioner also submitted photocopies of previously-submitted documents.

On appeal, counsel argues that the regulations do not require that the beneficiary's past employment be full-time or paid. Counsel's contention that neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying is correct. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious

vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

Counsel submits photocopies of previously-submitted documents; however, no new evidence has been submitted that would suggest the beneficiary received a salary for his services at the Camara Mosque. Counsel argues that, in the September 28, 1996 letter, "the word voluntary . . . does not mean [the beneficiary] was a volunteer, it means that he voluntarily entered the profession of serving God and that this has a berisory [sic] value." The individual who wrote the letter in question does not provide any support for counsel's interpretation of the word "voluntary." The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503 (BIA 1980). Further, there is no documentary evidence that the beneficiary received any remuneration for his services in the Ivory Coast. Moreover, it must be noted that the most recent letter concerning the beneficiary's activities at the mosque in the Ivory Coast is dated September 28, 1996. The petition was filed nearly two years later. There is no discussion of what the beneficiary was doing during the two-year period immediately prior to filing.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from August 11, 1996 to August 11, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary a weekly salary of \$300.00 (approximately \$15,600.00 annually). On February 4, 1999, the director requested that the petitioner submit evidence of its ability to pay the proffered wage. The petitioner did not submit any evidence of its ability to pay. On appeal, counsel contends that the petitioner "established to some degree of certainty financial viability." The petitioner submits a self-prepared financial statement for the period from July 1, 1998 through February 28, 1999. The petitioner also submits a 1998 Form 990-EZ, Return for Organization Exempt from Income Tax. There is no evidence that this return was ever filed with the Internal Revenue Service, and it is not supported by any documentary evidence. The evidence submitted in support of this petition is not sufficient. The financial statement is not audited and the tax return is not supported by any independent documentary evidence and, therefore, cannot be accorded any evidentiary weight. As such, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it is a qualifying, non-profit religious organization as required at 8 C.F.R. 204.5(m)(3). Further, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.